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8 **IN THE UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 IN RE: SOUTHWEST EXCHANGE, INC.,
INTERNAL REVENUE SERVICE SECTION
11 1031 TAX DEFERRED EXCHANGE
LITIGATION,

Case No. MDL No. 1878
Case No. 2:07-cv-01394-RCJ-LRL

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13 **ORDER GRANTING**
14 **PETITION OF RECEIVER FOR APPROVAL OF**
15 **THE INTERCREDITOR AGREEMENT AMONG**
SETTLEMENT CLASS AND STATE COURT PLAINTIFFS

16 Larry L. Bertsch, Receiver (the "Receiver") petitioned this Court for Approval of the
17 Intercreditor Agreement, among Settlement Class and State Court Plaintiffs ("Petition") on
18 November 24, 2010. Dkt. 275. Pursuant to Local Rule 7-2(b), oppositions to the Petition were due
19 on or before December 13, 2010. No party in interest filed an opposition. Pursuant to Local Rule 7-
20 2(d), failure to file an opposition is a consent to the granting of the Petition. The Petition is ripe for
21 adjudication.

22 **IT IS ORDERED that,**

- 23 1. The Petition of Receiver for Approval of the Intercreditor Agreement among
24 Settlement Class and State Court Plaintiffs is granted in its entirety.
- 25 2. The Intercreditor Agreement, attached to the Petition, is approved in its entirety.
- 26 3. The following parties are bound by the Intercreditor Agreement:
- 27 a) Southwest Exchange, Inc., Qualified Exchange Services, Inc., Capital Reef
28 Management Corp. and all other entities which were the subject of a Receivership (the

1 Receivership Entities”) in *In Re: Receivership of Southwest Exchange, Inc. and Consolidated*
 2 *Litigation*, Case No. 07-A-535439-B in the Eighth Judicial District Court of the State of
 3 Nevada in and for the County of Clark (the “State Court Action”).

4 b) All plaintiffs in the State Court Action, who are not members of the
 5 Settlement Class (the “State Court Plaintiffs”).

6 c) The Settlement Class as defined in *In Re: Internal Revenue Service § 1031*
 7 *Tax Deferred Exchange Litigation*, MDL Docket No. 1878, Case No. 2:07-cv-01394-RJ-
 8 (LRL), pending in the United States District Court for the District of Nevada (the “Federal
 9 Class Action”).

10 4. The State Court Plaintiffs and the Settlement Class are hereby ordered to exercise
 11 their best efforts at all times to:

12 a) Cooperate with each other and the Receiver in their collection efforts on the
 13 State Court Judgment and the Class Action Judgment.

14 b) Coordinate the use of post judgment remedies so that both the State Court
 15 Plaintiffs and the Settlement Class may take the same advantage of the selected remedy at the
 16 same time, whether by recordation in a foreign jurisdiction, execution, judgment debtor
 17 examination, appointment of a receiver, or otherwise, and neither gains an advantage by way
 18 of time or priority over the other.

19 c) Deposit all collections and recoveries derived from any source from post
 20 judgment remedies or similar collection efforts into the Southwest Exchange Qualified
 21 Settlement Fund.

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